City of Lafayette Staff Report

For:	City Council
By:	Lindy Coburn, Associate Planner
Date Written:	July 10, 2008
Meeting Date:	July 28, 2008
Subject:	Agreement for Installation and Maintenance of Existing and New Landscaping between Karel & Anne Fisher and the City of Lafayette, located at 363 Read Drive. APN 237-510-001

Introduction

The attached Agreement for Installation and Maintenance of Existing and New Landscaping between Karel & Anne Fisher and the City of Lafayette was a condition of approval for HDP24-07. The attached agreement meets the requirement for approval.

Fiscal Impact

None

Recommendation

Accept Agreement for Installation and Maintenance of Existing and New Landscaping and authorize the City Clerk to accept and record.

Attachments:

- Agreement for Installation and Maintenance of Existing and New Landscaping

10B

Record at the request of City of Lafayette
Return to:
City of Lafayette
3675 Mt. Diablo Boulevard, Suite 210
Lafayette, CA 94549

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF EXISTING AND NEW LANDSCAPING

THIS AGREEMENT is made this _____ day of _____, _____, between Karel & Anne Fisher hereafter referred to as "Property Owner," and the CITY OF LAFAYETTE, a Municipal Corporation, hereafter referred to as "City."

RECITALS

THIS AGREEMENT is based upon the following facts:

1. Property Owner is the owner of real property in the City of Lafayette, 363 Read Drive, (Assessor's Parcel Number 237-510-001) described in Exhibit "A" attached to this Agreement and made a part of it by this reference;

2. On August 16, 2007, the City granted a Hillside Development Permit to the Property Owner in accordance with the zoning ordinance of the City of Lafayette.

3. By the terms of the Hillside Development Permit, the Property Owner is required to install and maintain landscaping in accordance with a plan approved by the City on August 6, 2007, a copy of which is on file in the City Office to which reference is made for further particulars;

4. Both parties recognize that the installation and maintenance of landscaping is an integral part of the Property Owner's plan for development of the property, and is necessary to carry out the purpose and intent of the City's Land Use regulations, and that the development would not have been approved by City without the assurance that this Agreement would be executed by Property Owner.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES, as follows:

1. PURPOSE. The purpose of this Agreement is to assure (a) installation of the landscaping in accordance with landscape plan previously approved by the City and (b) continued maintenance and care of the existing landscaping.

2. PROPERTY SUBJECT TO AGREEMENT. The property which is the subject of this Agreement is described in Exhibit "A" which is attached to this Agreement and incorporated in it by this reference.

3. CITY PROCEEDINGS. Reference is made to the Zoning Administrator proceedings conducted by the City (Planning File No. HDP24-07) and the landscaping plan for the property, a copy of which is on file in the City Offices.

4. LANDSCAPING AS A BENEFIT. Property Owner agrees that the landscaping which he/she is obligated to provide will materially benefit his/her property and is necessary to comply with the 22 condition(s) imposed by the City as a requirement of the development of the property.

5. DUTY TO INSTALL AND MAINTAIN LANDSCAPING. Property Owner agrees to complete the installation of the approved landscaping prior to final building inspection approval, and diligently to maintain and care for the landscaping which he/she installs, using generally accepted methods of cultivation and watering. Property Owner shall maintain that standard care necessary to prevent the landscaping from deteriorating to the extent that its value as landscaping is destroyed.

6. CITY MAY MAINTAIN LANDSCAPING. Property Owner agrees that if he/she fails to meet the standard of maintenance necessary to keep the landscaping in a healthy condition, the City will give written notice of the deficiency to the owner who shall have 20 days to make the necessary correction, and if the correction is not made within 20 days the City may elect to take the steps necessary to assure that the landscaping is maintained and cared for. To do this, the City shall service a notice of its intent to enter the premises for this purpose. The City shall either personally serve the notice upon the Property Owner or mail a copy of it by Certified Mail at the Property Owner's last known address, or as shown on the tax rolls at least 15 days in advance of the date when it intends to enter the premises. For this purpose, the City may enter upon the property and perform such work as it considers reasonably necessary and proper to restore and maintain the landscaping. The City may act either through its own employees or through an independent contractor.

7. CITY'S COSTS OF MAINTENANCE A LIEN. If the City incurs costs in restoring or maintaining the landscaping after following the procedure set forth in Paragraph 6 above, the City shall make demand on the Property Owner for payment, if the Property Owner fails to pay the costs incurred by the City within 30 days of the date demand was made, the City may make the costs a lien upon the real property described in Exhibit "A" by recording a notice that it has incurred expenses under the terms of this Agreement with the County Recorder of Contra Costa County. The notice shall state the fact that the City has incurred the costs under the terms of this Agreement and shall state the amount, together with the fact that it is unpaid, and draws interest at the rate of 7 percent a year until paid.

8. ADDITIONAL REMEDIES. The City may as an alternative to the lien procedure set forth above in Paragraph 7, bring legal action to collect the sums due as the result of making of expenditures for restoration and maintenance of the landscaping. The Property Owner agrees that if legal action by the City is necessary to collect the amount expended by the City, the Property Owner agrees to pay the City a reasonable sum as attorney's fees and court costs, together with interest from the date which is 30 days after the City has given its notice, under Paragraph 6 above.

9. NOTICES. Notice given by each party to this Agreement shall be given to the other party at the address shown below:

Notices to the City shall be addressed to the Planning Services Manager, City of Lafayette, 3675 Mt. Diablo Boulevard, Suite 210, Lafayette, CA 94549. Notices to the Property Owner shall be addressed to him/her at the following address:

Karel & Anne Fisher
363 Read Drive
Lafayette, CA 94549

When Property Owner ceases to be the owner, he/she may file with the City a notice to that effect containing the name and address of the new owner and a copy of the deed. Upon doing so, the subsequent Grantee is charged with the obligation under this Agreement.

10. MISCELLANEOUS TERMS AND PROVISIONS:
   (a) If any provision of this contract is adjusted invalid, the remaining provisions of it are not affected.
   (b) Notice to Property Owner shall be considered to have been given to him/her when sent to his/her address above stated.
   (c) This writing contains a full, final and exclusive statement of the contract of the parties.
   (d) Property Owner appoints the City as his/her Attorney-in-fact, to do all acts and things which the City considers necessary to restore or maintain the landscaping approved under the Zoning Administrator proceedings.
   (e) If there is more than one signer of this Agreement as Property Owner, their obligations are joint and several.
   (f) The obligations upon the owner signing this Agreement terminates personally as to him/her when he/she conveys his/her interest in the property and files for record with the County Recorder a copy of assignment of this Agreement. In this case the new owner(s) takes title subject to the requirements of this agreement.

11. AGREEMENT ATTACHES TO LAND. This Agreement pertains to and runs with the real property described in Exhibit "A". This Agreement binds the successors in interest of each of the parties to it.

12. CITY MAY REQUIRE ADDITIONAL SECURITY. If upon execution of this Agreement or during the course of performance the City considers that it is necessary to have the Property Owner post additional security to guarantee the performance of his/her obligations, the City may require the Property Owner to post additional security. The City may require either a cash deposit or a surety bond guaranteeing performance, signed by sureties, and in a form deemed satisfactory to the City. The condition of the security shall be that if the Property Owner fails to perform his/her obligations under this Agreement, the City may in the case of a surety bond require the sureties to perform the obligations of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF LAFAYETE:

_____

Mayor, City of Lafayette

ATTEST:

_____

City Clerk

PROPERTY OWNER(S):

_____

Karel Fisher, Property Owner

_____

Anne Fisher, Property Owner

NOTE: Property Owner's signature(s) must be notarized on a separate notary sheet. Signatures must match letter-for-letter with printed name on this agreement.

ATTACHMENTS: Exhibit "A" Legal Description

State of California
County of Contra Costa } ss.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

On October 31, 2007 (Date), before me, Aileen M. Ames, Notary Public (Printed Name of Notary Public),

personally appeared Karel Fisher & Anne Fisher (Printed Name(s) of Signer(s)),

- ☐ personally known to me - or -
- ☒ proved to me on the basis of satisfactory evidence:
  - ☒ form(s) of identification CA DL R0446482 & CA DL N4718286
  - ☐ credible witness(es) _____

to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he/she~~/they executed the same in ~~his/her~~/their authorized capacity(ies), and that by ~~his/her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

AILEEN M. AMES
COMM. # 1615609
NOTARY PUBLIC - CALIFORNIA
CONTRA COSTA COUNTY
My Comm. Expires NOV 20, 2009

(Seal)

Aileen M. Ames
Signature of Notary Public

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Landscape Agreement _____,

containing _____ pages, and dated _____.

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
- ☐ Attorney-in-Fact
- ☐ Corporate Officer(s) _____ (Title(s))
- ☐ Guardian/Conservator
- ☐ Partner - Limited/General
- ☐ Trustee(s)
- ☐ Other: _____

representing: _____ (Name(s) of Person(s) or Entity(ies) Signer is Representing)

Additional Information

- ☐ Additional Signer(s)
- ☐ Signer(s) Thumbprint(s)
- ☐ Other

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EXHIBIT "A"

BOOK 13829PG 507

PARCEL ONE:

Parcel A, as shown on the parcel map filed September 22, 1982, Map Book 103 Parcel Maps page 3, Contra Costa County records.

EXCEPTING THEREFROM:

Rights reserved in the deed from Russell J. Bruzzone, et ux, recorded March 10, 1967, Book 5322 Official Records, page 440, as follows:

"All oil, gas, petroleum and other hydrocarbon substances, minerals and water in, under or recoverable from the portion of subsurface of the above-described land lying below a plane parallel to and 500 feet vertically below the surface of said land, and the right to remove from, store in, and inject into said portion of the subsurface of said land, oil, gas, petroleum and other hydrocarbon substances, minerals and water; and excepting and reserving to Grantors, their successors and assigns rights-of-way, easements and servitudes in and through said portion of the subsurface of said land for the prupose of exercising the rights herein excepted and reserved, including, but not limited to, the right from time-to-time to drill well holes, to case same, and otherwise to complete and maintain wells into and through said portion of the subsurface of said land from surface locations outside of said land; PROVIDED, HOWEVER, that the rights herein excepted and reserved do not and shall not include the right to enter upon the surface of said land or any portion thereof lying above a plane parallel to and 500 feet vertically below the surface of said land, and do not and shall not include the right to inject or store oil, gas, petroleum or other hydrocarbon substances, minerals or water into or in any portion of said land lying above a plane parallel to and 500 feet vertically below the surface of said land."

PARCEL TWO:

An easement (not to be exclusive) for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil, sewer pipe lines, telephone, television service, electric light and power lines, together with the necessary poles or conduits, as an appurtenance to Parcel One above, over that portion of Parcels C and D, as shown on the Parcel Map filed June 28, 1976, Book 46, Parcel Maps, page 12, Contra Costa County records, lying within the strip of land designated as "Area to be Dedicated to the City of Lafayette" on said Parcel Map.

PARCEL THREE:

An easement (not to be exclusive) for use as a roadway for vehicles of all kinds, pedestrians and animals, for water, gas, oil, sewer pipelines, telephone, television service electric light and power lines, together with the necessary poles or conduits, as an appurtenance to Parcel One above, described as follows:

A strip of land 30 feet in width (right angle measurements), the northeasterly line of which is described as follows:

Beginning at the most westerly corner of Parcel C, as shown on the Parcel Map filed June 28, 1976, Map Book 46 Parcel Maps page 12, Contra Costa County records, thence from said point of beginning, south 38° 22' 11" east, along the western line of said Parcel C and the western line of Parcel D, as shown on said Parcel Map (46 PM 12), 176.87 feet to a point on the northerly line of Parcel A, as shown on the Parcel Map filed September 22, 1982, Map Book 103, Parcel Maps page 3, Contra Costa County Records.

EXHIBIT "A" CONTINUED

The side lines of said 30 foot strip shall be lengthened or shortened to form a continuous strip of land.

A.P.N.: 237-510-001

END OF DOCUMENT

PARCEL MAP

SUBDIVISION MS 504-81

A PORTION OF

RANCHO LAGUNA DE LOS PALOS COLORADOS 15 M 308

CITY OF LAFAYETTE

CONTRA COSTA COUNTY, CALIFORNIA

CREEGAN & D'ANGELO CONSULTING ENGINEERS

SCALE: 1"=100' MAY 1982

θ = -0°57'52"

GRID & TRUE

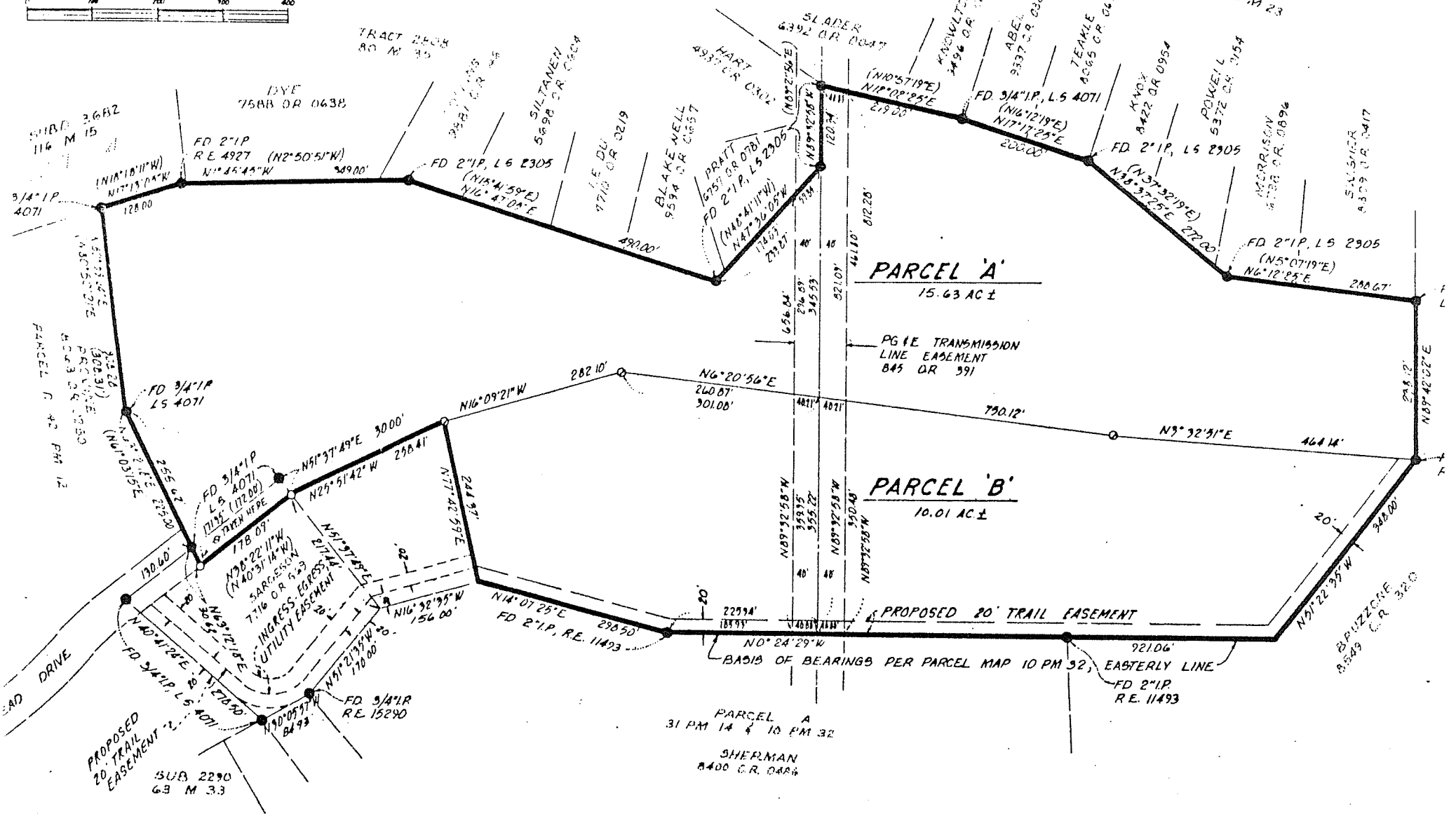
SCALE 1"=100'

LEGEND:

- ● FOUND MONUMENTS AS NOT
- ○ SET 3/4" IRON PIPE, TAGGED L.S
- ⌀ SET 1/2" REBAR & CAP TAGGED
- ( ) RECORD INFORMATION AS SHOWN

BASIS OF BEARINGS:

THE BEARING N0°24'29"W WAS TAK
BASIS OF BEARINGS FOR THIS MAP,
MAP 10 PM 32.
THE BEARINGS ON THIS MAP ARE BA
THE CALIFORNIA COORDINATE SYSTEM


SURD 3089
88 M 23
SLADER 6392 OR 0047
KADWELTON 2496 OR 0205
ABEL 9537 OR 0368
TEAKLE 4065 OR 0633
KNOX 8422 OR 0954
POKEL L 5372 OR 0154
MCGRRISON 8138 OR 0896
SINGH 8309 OR 0417
TRACT 2608 80 M 33
DYE 7588 OR 0638
SUBD 3682 116 M 15
SILTANEN 5698 OR 0564
LE DU 9719 OR 0219
BLAKE NELL 9594 OR 0857
HART 4935 OR 0302
PRATT 6755 OR 0781
FD 2"I.P, LS 2305
FD 2"I.P R.E. 4927 (N2°50'51"W) N1°55'45"W 389.00'
FD 3/4"I.P 4071
FD 3/4"I.P LS 4071
PARCEL 'A'
15.63 AC ±
PARCEL 'B'
10.01 AC ±
PG&E TRANSMISSION LINE EASEMENT 845 OR 391
PROPOSED 20' TRAIL EASEMENT
BASIS OF BEARINGS PER PARCEL MAP 10 PM 32, EASTERLY LINE
FD 2"I.P. R.E. 11493
FD 3/4"LR R.E. 15290
PROPOSED 20' TRAIL EASEMENT
SUB 2290 63 M 33
PARCEL A 31 PM 14 & 10 PM 32
SHERMAN 8400 O.R. 0484
BRUZZONE 8549 O.R. 320
DRIVE